

Substantive Consolidation – A Post-Modern Trend

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The ability of creditors in bankruptcy to seek the “substantive consolidation” of the assets and liabilities of affiliated entities has been recognized for more than sixty years, even though the doctrine has never been codified in any bankruptcy statute (except in the limited case of spouses). Essentially, for purposes of distribution in bankruptcy, substantive consolidation treats multiple entities as if they were one. As a consequence, claimants can no longer recover on their claims from their original obligors; rather, claimants recover their ratable share of a common “hotchpot” consisting of the combined assets of the consolidated entities.

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